

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LANDON L. CLARO, individually,

Plaintiff,

vs.

ASH GROVE CEMENT COMPANY, a  
Foreign corporation,

Defendant.

NO. 2:21-cv-00097

DEFENDANT'S NOTICE OF REMOVAL  
TO FEDERAL COURT UNDER 28 U.S.C.  
§ 1441 (DIVERSITY OF CITIZENSHIP)

PLEASE TAKE NOTICE that Defendant Ash Grove Cement Company files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

Defendant removes this case from the Superior Court for the County of King, Washington, in which the case was commenced and pending, to the U.S. District Court for the Western District of Washington, being the district embracing the place where the case is pending. In support of this removal, Defendant states as follows:

**PROCEDURAL HISTORY**

1. On December 28, 2020, Plaintiff Landon L. Claro personally served process upon Defendant's registered agent, Corporation Service Company. A copy of Plaintiff's

DEFENDANT'S NOTICE OF REMOVAL TO  
FEDERAL COURT UNDER 28 U.S.C. § 1441  
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FLOYD, PFLUEGER & RINGER P.S.

200 W. THOMAS ST., SUITE 500  
SEATTLE, WA 98119-4296  
TEL 206 441-4455  
FAX 206 441-8484

1 Complaint is included herewith as **Exhibit 1**. Plaintiff did not simultaneously file his  
 2 Complaint in the King County Superior Court, however.

3 2. Plaintiff's Complaint alleges that he was injured while working at Defendant's  
 4 premises when a "roll-up bay door came down suddenly and struck him..." (*See* Compl. at ¶  
 5 2.1-2.5).

6 3. On January 22, 2021, Plaintiff filed his lawsuit in the King County Superior  
 7 Court for the State of Washington under Cause No. 21-2-00966-9 KNT.<sup>1</sup>

8 4. Pursuant to 28 U.S.C. § 1446(b)(1), this removal was timely effected within 30  
 9 days of service of the Summons and Complaint upon Defendant.

### 10 **DIVERSITY JURISDICTION**

11 5. This Court has original jurisdiction under 28 U.S.C. § 1332 because there is  
 12 complete diversity among Plaintiff and Defendant and Defendant in good faith believes that the  
 13 amount in controversy exceeds \$75,000.00.

14 6. Plaintiff has alleged himself a resident of the State of Washington. (*See* Compl.  
 15 at ¶ 1.2).

16 7. Plaintiff's Complaint correctly notes that Defendant is a foreign corporation.  
 17 (*See* Compl. at ¶ 1.3). In fact, Defendant is a Delaware corporation with a principal place of  
 18 business in Kansas. A true and correct copy of Defendant's January 28, 2020 annual report  
 19 filed with the Washington Office of the Secretary of State confirming this is included herewith  
 20 as **Exhibit 2**.

21 8. Defendant is therefore a Delaware and Kansas citizen for purposes of diversity  
 22 jurisdiction. 28 U.S.C. § 1332(c)(1) ("[A] corporation shall be deemed to be a citizen of every  
 23

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24  
 25 <sup>1</sup> Defendant, upon information and belief, understands that Plaintiff actually filed the case the evening of January  
 26 21, 2021. However, the lawsuit is believed to have been filed after 4:30 p.m., the time when the King County  
 27 Superior Court closes. *See* King County Local Civil Rule 77(f)(2)(A). Accordingly, court records consider it to be  
 filed the following day.

1 State and foreign state by which it has been incorporated and of the State or foreign state where  
2 it has its principal place of business...”).

3 9. There is therefore complete diversity among the Plaintiff, a Washington citizen,  
4 and Defendant, a Delaware and Kansas citizen.

5 10. Plaintiff’s Complaint does not list the dollar amount for which he prays.  
6 However, Defendant believes in good faith that the amount claimed by Plaintiff, and therefore  
7 in controversy, is in excess of \$75,000.00. *See generally Saint Paul Mercury Indem. Co. v. Red*  
8 *Cab Co.*, 303 U.S. 283, 288, 58 S. Ct. 586, 82 L.Ed. 845 (1938).

9 11. Plaintiff’s Complaint alleges that Plaintiff was struck on the shoulder and head  
10 “causing him severe personal injuries.” (*See* Compl. at ¶ 2.5). Plaintiff reiterates in his  
11 Complaint’s damages section that he “was caused to be severely injured” by the alleged  
12 incident, including requiring medical attention for alleged injuries that “prevail and will  
13 continue to prevail for an indefinite time in the future.” (*See* Compl. at ¶ 3.1-3.2). Plaintiff’s  
14 Complaint also seeks reimbursement for medical expenses, “a loss of earnings and a  
15 diminished earning capacity,” and general damages.

16 12. Accordingly, this Court has original jurisdiction over this action under the  
17 federal diversity statute, 28 U.S.C. § 1332(a)(1), because the amount in controversy is believed  
18 to exceed the sum or value of \$75,000 and complete diversity exists.

### 19 **INTRADISTRICT ASSIGNMENT AND OTHER MATTERS**

20 13. Pursuant to Local Rules, removal to the Seattle Division of the U.S. District  
21 Court for the Western District of Washington is appropriate because the original state court  
22 venue of Plaintiff’s action is King County, and because the alleged claim arose in King County.

23 14. Defendant has filed or will file with the state court clerk a Notice of Filing  
24 Notice of Removal pursuant to 28 U.S.C. § 1446(d). A copy of that notice will be included with  
25 the full state court record pursuant to W.D. Wash. LCR 101(c).  
26

27 DEFENDANT’S NOTICE OF REMOVAL TO  
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DECLARATION OF SERVICE

Pursuant to RCW 9A.72.085, I declare under penalty of perjury and the laws of the State of Washington that on the below date, I delivered a true and correct copy of DEFENDANT'S NOTICE OF REMOVAL TO FEDERAL COURT via the method indicated below to the following parties:

Daniel R. Whitmore  
Law Offices of Daniel R. Whitmore  
6840 Fort Dent Way, Suite 210  
Tukwila, WA 98188  
[dan@whitmorelawfirm.com](mailto:dan@whitmorelawfirm.com)

*Counsel for Plaintiff*

☐ Via Messenger  
☒ Via ECF  
☐ Via Facsimile  
☐ Via U.S. Mail

DATED this 26<sup>th</sup> day of January, 2021.

  
\_\_\_\_\_  
Monica R. Howard, Legal Assistant

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